

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 07-102348

Employee: Ann K. Chepely
Employer: Meramec Group, Inc.
Insurer: Self-insured/Cannon Cochran Management Services, Inc.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by section 287.480 RSMo, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms and adopts the award and decision of the administrative law judge dated January 29, 2009.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge Vicky Ruth, issued January 29, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 1st day of July 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Ann K. Chepely

Injury No. 07-102348

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Dependents: N/A

Employer: Meramec Group, Inc.

Additional Party: Second Injury Fund (left open)

Insurer: Self-insured/Cannon Cochran Management Services, Inc.

Hearing Date: October 29, 2008

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes.
2. Was the injury or occupational disease compensable under Chapter 287? Yes.
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of accident or onset of occupational disease: September 30, 2007.
5. State location where accident occurred or occupational disease was contracted: Franklin County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? N/A (see award).
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes (employer is self-insured c/o Cannon Cochran Management Services, Inc.).
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
The claimant worked on a factory line where she worked with molds and then kneaded the foam product before trimming and packing the product.
12. Did accident or occupational disease cause death? No. Date of death? N/A.

13. Part(s) of body injured by accident or occupational disease: Left shoulder.
 14. Nature and extent of any permanent disability: N/A.
 15. Compensation paid to-date for temporary disability: None.
 16. Value necessary medical aid paid to date by employer/insurer? None.
 17. Value necessary medical aid not furnished by employer/insurer? N/A.
 18. Employee's average weekly wages: N/A.
 19. Weekly compensation rate: N/A.
- Method of wages computation: N/A.

COMPENSATION PAYABLE

- Amount of compensation payable: N/A.
22. Second Injury Fund liability: Left open.
 23. Future medical awarded: Yes, see award.

Said payments to begin immediately and to be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

The compensation awarded to the claimant shall be subject to a lien in the amount of 20% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Mark Moreland. However, it is the understanding of the Administrative Law Judge that Mr. Moreland is deferring this fee until the final award hearing.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Ann K. Chepely

Injury No: 07-102348

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Dependents: N/A

Employer: Meramec Group, Inc.

Additional Party: Second Injury Fund (left open)

Insurer: Cannon Cochran Management Services, Inc.

On October 29, 2008, the claimant and the employer/insurer appeared for a temporary award hearing. The claimant, Ann K. Chepely, was represented by Mark E. Moreland. The employer/insurer was represented by Michael F. Banahan. Mary Ann Lindsey, also counsel for the employer/insurer, observed the hearing. The Second Injury Fund (SIF) did not participate in the hearing, and issues related to the SIF are deferred until the final award hearing. The claimant testified on her own behalf. John Crnkovich testified on behalf of the employer/insurer. Dr. William Sedgwick and Dr. Michael Milne testified by deposition. The employer/insurer submitted its brief on November 12, 2008. Counsel for the employee requested several extensions of time to submit a brief, which were granted. The employee submitted its brief on December 10, 2008.

STIPULATIONS

The parties stipulated to the following:

- On or about September 30, 2007, the claimant was an employee of Meramec Group, Inc. (the employer).
- The employer was operating subject to the Missouri Workers' Compensation Law.
- The employer's liability for workers' compensation was self-insured, in care of Cannon Cochran Management Services, Inc.
- The Missouri Division of Workers' Compensation has jurisdiction, and venue in Franklin County is proper.
- A Claim for Compensation was filed within the time prescribed by law.

ISSUES

At the hearing, the parties agreed that the issues to be resolved in this proceeding are as follows:

- Whether the claimant sustained an occupational disease that arose out of and in the course of employment.
- Medical causation.
- Whether the claimant's employment was a prevailing factor in her need for additional medical treatment.
- Notice.

EXHIBITS

On behalf of the claimant, the following exhibits were entered into evidence without objection:

Exhibit A	Dr. Sedgwick's reports.
Exhibit B	Dr. Sedgwick's deposition.
Exhibit C	Medical records of Dr. Tiefenbrunn/Sullivan Family Practice.
Exhibit D	Medical records of Dr. Rotramel/Patients First Health Care.
Exhibit E	MRI report, dated 3/25/08, from Patients First Health Care.
Exhibit F	Report of Injury filed by employer.
Exhibit G	Employee's Injury Report.

The employer/insurer offered the following exhibits, and they were admitted into the record without objection:

Exhibit 1	Dr. Milne's deposition.
Exhibit 2	Report from Dr. Tate.
Exhibit 3	Medical records of Dr. Coyle.
Exhibit 4	Omni (foam product).

Note: All marks, handwritten notations, highlighting, or tabs on the exhibits were present at the time the documents were admitted into evidence.

FINDINGS OF FACT

Based on the above exhibits and the testimony presented at the hearing, I make the following findings:

- The claimant began her employment with Meramec Group, Inc. (the employer), on September 22, 2003. The claimant is approximately 5 feet 3 inches tall, and weighs about 170 pounds.
- The claimant works on the first work shift, which runs between 7:00 a.m. and 3:00 p.m. She has a 20-minute lunch break and two 10-minute breaks. The claimant was laid off during the period of October 2006 to January 2007. When she returned to work in January 2007, she worked for the Industrial Products Division of the employer. This division makes mats, arms for computer chairs, and Omnis. An Omni is a foam cushion in which a person's face is placed during back surgery.
- On or about September 30, 2007, the claimant was working on a manufacturing line that was produced the foam Omnis. The employer fulfilled two contracts for producing Omnis in 2007, and each contract took approximately four weeks to complete.
- While on the Omni line, the claimant's duties included spraying the molds that make the products, closing the lids on the molds, and operating a panel that places the material in the molds. Both the spraying and the opening of the molds are accomplished by the claimant pushing a button; a robot/machine does the actual spraying and opening. When the molding process was completed, the claimant would push the Omni in on all sides to loosen it from the mold. Then, she would manually remove the products from the molds. Next, she would knead the Omnis to make them softer. The claimant would also trim and pack the products.
- The kneading action used in making Omnis involved pushing and squeezing the products with both hands. The claimant testified credibly that the kneading required her to exert significant force. She performed this task on a work table; one of the tables hit her a little above her belly button, and the other hit her a little below her belly button. She would push down on the Omnis, often while standing on tip toes, as she was leaning over the work table. She would use both arms and shoulders as she pushed down on the front and back of the Omni, and then she would turn it over and push down on the front and back again. The claimant had to be careful not to squeeze too hard or she could leave a handprint on the Omni, making it unusable.

- Making Omnis does not involve overhead work or work at the shoulder level.
- The claimant's quota was to make 30 boxes of Omnis per shift. There are six Omnis to a box. Thus, the total number of Omnis she was required to make each shift was 180, but she would often make up to 200. With the help of a coworker, the claimant usually made between 29 and 33 boxes of Omnis a day.
- While making Omnis in September 2007, the claimant worked with co-worker Kathy Whitworth. During the first three and one-half weeks of the four-week production period, the claimant would knead all four Omnis from each batch, while Ms. Whitworth sprayed the molds and trimmed excess from the finished Omnis. This made production go faster. This division of labor was by agreement of the claimant and Ms. Whitworth.
- After the initial three and one-half weeks, the claimant and Ms. Whitworth altered their habit so that they each kneaded two Omnis per batch of four.
- In mid-September 2007, the claimant began to experience bilateral shoulder problems. She felt that the left shoulder symptoms were caused by the process of making Omnis.
- On October 18, 2007, the claimant told her supervisor, John Crnkovich, that her left shoulder was hurting from making the Omnis for so long. That same day, she filled out an Employee Injury Report. She listed the date of injury as October 2, 2007. She indicated that while her arms had hurt for a while, she had thought that they would get better. In her Claim for Compensation, the claimant listed the date of injury as September 2007.
- By October 18, 2007, the claimant's right shoulder complaints had disappeared. Her left shoulder, however, still hurt.
- The employer/insurer sent the claimant to see Dr. Sandra Tate for an independent medical exam in November 2007. Dr. Tate felt that there was nothing in the claimant's job duties that appeared to be a prevailing factor in her current symptoms. She did not provide treatment.
- The claimant therefore went to her own doctor, Dr. Matthew Tiefenbrunn of Family First Clinic. He x-rayed claimant's shoulder and found it to be inflamed. He prescribed medications.
- On February 20, 2008, the claimant went to see Dr. William Sedgwick, a board-certified orthopedic physician. He performed an examination and reviewed x-rays. He noted that the claimant has symptoms and findings consistent with subacromial bursitis/supraspinatus tendinitis. Dr. Sedgwick also noted that rotator cuff pathology and long head of biceps pathology cannot be excluded. He indicated that repetitive activity such as that described by the claimant to have occurred in October 2007, involving the use of the shoulders, is the type of

activity that is known to cause or contribute to subacromial bursitis, tendinitis, and even rotator cuff tearing, as well as bicipital tendinitis. He recommended that she undergo an MRI. In his opinion, the claimant's work was the prevailing cause of her left shoulder symptoms.

- Dr. Sedgwick ordered an MRI of the claimant's left shoulder. The MRI was performed on or about March 25, 2008. The MRI report revealed a type III acromion. In addition, there was tendinosis of the supra and infraspinatus with at least partial thickness apparent bursal sided tearing of the supraspinatus near its insertion as well as some partial thickness intrasubstance tearing.
- On August 5, 2008, Dr. Sedgwick opined that the claimant would benefit from an arthroscopy of the left shoulder with acromioplasty and a rotator cuff debridement or repair, depending on the extent of the partial thickness tear. In Dr. Sedgwick's opinion, the claimant's work activities were the prevailing cause of her shoulder problems.
- Dr. Tiefenbrunn sent the claimant to Dr. Rotramel, who gave her a cortisone shot in her left shoulder on April 24, 2008. Although the shot helped for two weeks, the claimant's left shoulder again became painful.
- The employer/insurer then sent the claimant to Dr. Milne for an independent medical evaluation. Dr. Milne examined the claimant on June 17, 2008. His diagnosis was left shoulder rotator cuff tendinitis. Dr. Milne opined that as there did not appear to be any overhead motions involved in the claimant's job, he did not find that her employment was the primary and prevailing factor in her need for additional treatment.
- In his October 2, 2008, Addendum to his rating report, Dr. Milne noted that he had reviewed additional medical records and the MRI scan performed on the claimant. He noted that the MRI showed that the claimant has a type III acromion and possible partial thickness bursal sided tearing and rotator cuff tendinosis. He reiterated his opinion that he does not feel that the claimant's employment is the primary and prevailing reason for her to need additional treatment, although he does not doubt that she might respond favorably to a subacromial decompression. In his deposition, he indicated that it would be reasonable to perform the surgery, although he did not believe that it was related to her work.
- At the time that Dr. Milne examined the claimant in June 2008, she had been on FMLA leave (under the Family Medical Leave Act) and had not been working. It was not clear whether the doctor realized or recalled that fact when he drafted his report.
- Currently, the claimant experiences left shoulder pain. This pain bothers her at night, and sometimes wakes her from sleep. During the day, the claimant takes Tylenol for the pain. Her left shoulder problems affect her at work. Her shoulder pops often and is sore. Because of her left shoulder complaints, the claimant no longer vacuums or swims. Swinging her arms while walking causes shoulder pain. The claimant can perform overhead activities, but they are painful. In addition to the limitations of motion, the claimant has a loss of strength in her left shoulder.

- Mr. Crnkovich, the claimant's supervisor, testified that in his opinion, squeezing and pushing the Omnis did not require a great deal of force. He acknowledged that he is approximately 6 feet 3 inches tall and weighs about 250 pounds.
- Dr. Sedgwick was asked whether everyday, normal activities, such as picking up groceries, doing laundry, and driving would cause an otherwise normal individual with a type III acromion to have symptoms. He responded "not always. It depends on the condition of the surrounding musculature, how much laxity they have in their joint." He did add that a type III acromion does predispose a person to impingement and pain with these types of activities.
- During re-direct examination, Dr. Sedgwick again addressed the claimant's need for medical treatment:

Q (employee's attorney): And in any event, even if we assume as Mr. Banahan has alluded that she might have had rotator cuff tendinitis at some point in 2005, that wouldn't alter your opinion that the work activities that she described in connection with her complaints in 2007 are the prevailing factor in the need for her medical treatment that you are recommending. Is that accurate?

A (Dr. Sedgwick): That's correct assuming the facts that we've already been through them.

- Dr. Sedgwick testified credibly and convincingly that the claimant's condition/pathology can occur in the absence of the use of the arms overhead. He stated that impingement frequently occurs in an overhead position, such as when throwing or hitting a tennis shot or swimming. But, he explained, it can also occur in a midarc range of motion, and it can occur any time longitudinal force is applied to the shoulder with the arm in a slightly abducted position. That is, impingement can occur in an abducted position and this is similar to the type of activity that the claimant described to him.
- In a letter dated May 11, 2005, Dr. James Coyle noted that the claimant was seen for a follow-up; the claimant was three months postoperative C5 through C7 anterior cervical discectomy and fusion. He noted that her numbness in her upper extremities is improved, and that she does have mild rotator cuff tendinitis in her left shoulder. This is the only reference to rotator cuff tendinitis in Dr. Coyle's records. The basis for Dr. Coyle's statement regarding the claimant's rotator cuff is unclear. The claimant testified that Dr. Coyle did not treat her left shoulder.
- In his deposition, Dr. Sedgwick acknowledged that if Dr. Coyle's May 2005 reference to the claimant having mild rotator cuff tendinitis was a correct diagnosis, that this might change his opinion as to what was the prevailing factor in causing her condition. That is, he would then say that the work activity was an aggravating factor. He also indicated that he does not have any idea as to what the basis was for Dr. Coyle's conclusion that the claimant was suffering from mild rotator cuff tendinitis in 2005.
- Dr. Milne testified that the claimant's work was not the prevailing or primary factor "because she has this large type III acromion, which is part of how she's built," and because she did not perform any overhead work.

- Dr. Milne, however, did acknowledge that patients can have rotator cuff problems or tearing without overhead work. He also indicated that although people with rotator cuff problems often have a type II or type III acromion, he doesn't think you can say that the type II or type III acromion makes one more likely to tear a rotator cuff. Instead, he indicated that rotator cuff tears are "associated" with type II or type III acromions; the two things are often found together. In Dr. Milne's opinion, a 45-year old person with a type II acromion "has probably a 45 percent chance of having this problem if they live in a bubble."
- Dr. Milne acknowledged that he has never seen a demonstration of how the claimant performed the kneading function of her job. When asked whether it would have been helpful to have had a better description of the claimant's job when he was reaching his opinion, he responded that "[i]t could have been, but the patient was asked and she answered that she didn't work at or above shoulder level." Thus, Dr. Milne again placed significant importance on the fact that the claimant's work did not involve tasks at or above the shoulder level.
- In April 2006, prior to the current injury, the claimant treated for anterior chest and left shoulder blade discomfort, along with difficulty breathing. Also in April 2006, the claimant mentioned left shoulder pain to Dr. Tate. The claimant credibly testified that the shoulder complaints that she suffered in 2006 were different in nature from those she experienced in 2007 and 2008. In April 2006, she had a sharp pain in her chest that radiated into her left shoulder. The claimant testified that those symptoms resolved. The shoulder pain in 2007 and 2008 did not involve pain in her chest or difficulty breathing. In Dr. Sedgwick's opinion, the shoulder symptoms the claimant had in 2006 were in a different area and were not related to any ongoing problem she is having now.

CONCLUSIONS OF LAW

Based upon the findings of fact, I find the following:

The claimant contends that she sustained a repetitive trauma injury to her left upper extremity (shoulder) as a result of her work activities in September and October 2007. Thus, this case is governed by the amendments to the Workers' Compensation Act (the Act) that became effective on August 28, 2005.

In considering the issues, it must be noted that Section 287.800, RSMo. 2005, requires administrative law judges . . . and any reviewing court to construe the provisions of this chapter strictly, and weigh the evidence impartially, without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts.

The parties agree that the claimant has a type III acromion and a partial thickness rotator cuff tear. They do not agree, however, as to whether that the claimant's left shoulder condition is a compensable injury of occupational disease.

Issues 1, 2, and 3: Accident/occupational disease arising out of and in the course of employment; medical causation; and prevailing factor in the need for additional medical treatment

Under Missouri Workers' Compensation law, the claimant bears the burden of proving all essential elements of his or her workers' compensation claim. Proof is made only by competent and substantial evidence, and may not rest on speculation. Medical causation not within lay understanding or experience requires expert medical evidence. When medical theories conflict, deciding which to accept is an issue reserved for the determination of the fact finder.

In addition, the fact finder may accept only part of the testimony of a medical expert and reject the remainder of it. Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony that it does not consider credible and accept as true the contrary testimony given by the other litigant's expert.

Section 287.067.1 (RSMo. 2005) defines the term "occupational disease" as an identifiable disease arising with or without human fault, out of and in the course of employment. Ordinary diseases of life to which the general public is exposed outside of employment shall not be compensable, except where the diseases follow as an incident of an occupational disease, as defined in the Act. The occupational disease need not have been foreseen or expected, but after its contraction, it must appear to have had its origin in a risk connected with the employment and to have flowed from that risk as a rational consequence.

Section 287.067.3 (RSMo. 2005) provides that occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and the disability. The "prevailing factor" is defined as the primary factor, in relation to any other factor, that causes both the resulting medical condition and the disability. This statute also provides that "[o]rdinary, gradual deterioration, or progressive deterioration of the body caused by aging or by the normal activities of day-to-day life shall not be compensable."

In this case, there are two main causative factors to be compared. The first factor is the type III acromion that is genetic to the claimant. The second factor is the repetitive "kneading" work performed by the claimant as many as 200 times per day for approximately 4 weeks during September and October 2007. Dr. Sedgwick performed this comparison, and determined that the primary or prevailing factor was the repetitive work the claimant performed for the employer.

Dr. Milne, however, placed too much reliance upon the fact that the claimant did not perform overhead work at her employment. When pressed, he did acknowledge that people can have rotator cuff problems or tearing without overhead work. In spite of this, he did not think it was necessary for him to see a demonstration of how the claimant performed the repetitive kneading function of her job. And when asked whether it would have been helpful to have had a better description of the claimant's job when he was reaching his opinion, he responded that "[i]t could have been, but the patient was asked and she answered that she didn't work at or above shoulder level." It seems that in making his causation determination, Dr. Milne relied on the lack of overhead work to the exclusion or near exclusion of all other factors.

Dr. Sedgwick testified that kneading the foam cushions (Omnis) by pushing down on the products on a table required repetitive and forceful use of her arms with her elbows extended. In his opinion, this type of work was the prevailing cause of her pathology as noted on an MRI. He noted that the MRI scan revealed a type III acromion and the partial thickness, bursal sided tearing of the supraspinatus near its insertion as well as a partial thickness intrasubstance tearing and fluid in the subacromial bursa. Dr. Sedgwick testified that in his opinion, the forceful kneading of the cushions caused an impingement of the rotator cuff and the subacromial bursa on top of the underside of her acromion, which caused the tear.

Dr. Sedgwick explained that the claimant's condition can occur not just with overhead work, but also in a midarc range of motion, and – like here - any time longitudinal force is applied to the shoulder with the arm in a slightly abducted position. The claimant demonstrated this position at the hearing when she bent over the Omni, which was on the hearing room table, and forcefully pushed the Omni downward repeatedly. Dr. Sedgwick also testified that a palm down abduction test is similar to the type of activity that the claimant described to him. He noted that the palm down abduction test seeks to mimic an impingement that occurs with the palms down; in the claimant's case, this palm down abduction test was positive, as was the midarc motion test.

For the reasons discussed above, Dr. Sedgwick's opinions and findings are more thorough and credible than those of Dr. Milne.

As for the brief reference to mild rotator cuff tendinitis, found in Dr. Coyle's May 11, 2005 letter, I do not place significant importance to this single, brief reference to a prior history of mild rotator cuff tendinitis. There is no support for this 2005 diagnosis in the record. We do not know what Dr. Coyle based his diagnosis on, what tests might have been performed, or what complaints that claimant had at that time.

Dr. Milne testified that the claimant's work was not the prevailing or primary factor "because she has this large type III acromion, which is part of how she's built." He based his opinion in part on the lack of overhead work that the claimant performed on the job. However, he later admitted that a person could injure his or her rotator cuff by working with their arms extended out in front of them in the 80 to 90 degree range.

Based upon a review of the evidence, I find that the prevailing factor in the claimant's condition (a torn rotator cuff and the resulting pain, limitations of motion and loss of strength), is the repetitive nature of her work at the employer's factory. The prevailing or primary cause of this condition was the repetitive pushing, pulling, and squeezing performed on 180 to 200 Omnis per day. As for the exact date of the injury, I find that the appropriate date of injury for the occupational disease is September 30, 2007.

Medical aid is component of the compensation due to an injured worker under the Act. Pursuant to Section 287.140, an employer is required to furnish such medical, surgical, and hospital treatment as is necessary to cure and relieve the effects of a work-related injury of disability. For medical care to be awarded, the medical care must of necessity flow from the occupational disease, via evidence of a medical-causal connection between the compensable injury and the medical condition for which treatment is sought, before the employer is to be held responsible. The employee must prove beyond speculation and by competent and substantial evidence that his or her work-related injury is in need of treatment. Conclusive evidence is not required. However, evidence that shows only a mere possibility of the need for future treatment will not support an award.

Dr. Sedgwick indicates that the claimant would benefit from an arthroscopy of the left shoulder with acromioplasty and a rotator cuff debridement or repair, depending on the extent of the partial thickness tear. In his opinion, the claimant's work activities were the prevailing cause of her shoulder problems. Dr. Milne also testified that it would be reasonable to perform surgery to alleviate the claimant's symptoms, although he still believed that the symptoms were not due to a work-related condition. Thus, both doctors agree that the claimant needs future treatment, including surgery.

The claimant's request for future medical treatment, including surgery, for her left shoulder is granted. She has demonstrated that her work activities, in particular the kneading of the Omnis in September and October 2007, was the prevailing factor in bringing about her left shoulder condition and her need for medical treatment. She has shown that her need for medical treatment flows from a compensable occupational disease.

Issue 4: Notice

At the hearing, the employer/insurer stated that notice was an issue in this case. In its brief, however, the employer/insurer acknowledged that the "[c]laimant apparently provided the employer with both timely actual and written notice of her left shoulder condition and the fact she believed that this condition related to her work activities...." The employer/insurer further acknowledged that "[b]ased upon the evidence available at present, Section 287.420 will not operate to bar the employee's Claim." [Footnote from original omitted.] The employer/insurer also states that, at the final hearing, it reserves the right to argue the notice issue should there be contrary additional evidence at that time.

Thus, for purposes of the temporary or partial award, the issue of notice is moot.

Summary

The claimant prevails on the issues of whether the claimant sustained an occupational disease arising out of and in the course of employment; medical causation; and whether the claimant's employment was the prevailing factor in her need for additional medical treatment. For purposed of the temporary or partial award, the issue of notice is moot.

Any pending objections not expressly ruled on in this award are overruled.

Date: _____

Made by: _____

Vicky Ruth

Administrative Law Judge

Division of Workers' Compensation

A true copy: Attest:

Peter Lyskowski

Acting Division Director

Division of Workers' Compensation

Claimant's Exh. G.

In some places, the claimant indicates that the date of injury was September 30, 2007.

Employer/insurer's Exh. 2.

Claimant's Exh. C and E.

Claimant's Exh. A and B.

Claimant's Exh. B (Dr. Sedgwick's August 5, 2008, report, included in the deposition). See also Claimant Exh. B, pp. 12-13.

Claimant's D.

Employer/insurer's Exh. 1.

Employer/insurer's Exh. 1, p. 24.

Employer/insurer's Exh. 1, p. 21.

Employer/insurer's Exh. 1, pp. 21-22.

Claimant's Exh. B, p. 31.

Id.

Claimant's Exh. B, p. 35.

Claimant's Exh. B, p. 14.

Claimant's Exh. B, pp. 14-15.

Employer/insurer's Exh. 3.

Claimant's Exh. B, pp. 26-27.

Claimant's Exh. B, p. 27.

Claimant's Exh. B, p. 34.

Employer/insurer's Exh. 1, p. 15.

Employer/Insurer's Exh. 1, p. 16.

Employer/insurer's Exh. 1, pp. 24-25.

Employer/insurer's Exh. 1, p. 25.

Employer/insurer's Exh. 1, p. 29.

Employer/insurer's Exh. 1, p. 30.

Employer/insurer's Exh. 1, p. 31.

Claimant's Exh. A. See also Claimant's Exh. B.

Employer/insurer's Exh. 2.

Claimant's Exh. B, p. 20.

Fischer v. Archdiocese of St. Louis, 793 S.W.2d 195, 198 (Mo. App. W.D. 1990); *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo. App. 2002).

Griggs v. A.B. Chance Company, 503 S.W.2d 697, 703 (Mo. App. W.D. 1974).

Wright v. Sports Associated, Inc., 887 S.W.2d 596, 600 (Mo. banc 1994).

Hawkins v. Emerson Elec. Co., 676 S.W.2d 872, 977 (Mo. App. 1984).

Cole v. Best Motor Lines, 303 S.W.2d 170, 174 (Mo. App. 1957).

Webber v. Chrysler Corp., 826 S.W.2d 51, 54 (Mo. App. 1992); *Hutchinson v. Tri State Motor Transit Co.*, 721 S.W.2d 158, 163 (Mo. App. 1986).

Section 287.067.1 (RSMo. 2005).

Id.

Section 287.067.3 (RSMo. 2005).

Id.

Employer/Insurer's Exh. 1, p. 16.

Employer/insurer's Exh. 1, p. 30.

Employer/insurer's Exh. 1, p. 31.

Claimant's Exh. B, p. 13.

Claimant's Exh. B, p. 12.

Claimant's Exh. B, p. 12-13.

Claimant's Exh. B, p. 14.

Claimant's Exh. B, pp. 14-15.

Claimant's Exh. B, p. 8.

Employer/insurer's Exh. 1, p. 15.

Id.

Employer/insurer's Exh. 1, p.28.

Mathia v. Contract Freighters, 929 S.W.2d 271, 277 (Mo. App. S.D. 1996).

Section 287.140, RSMo. 2005.

Bock v. Broadway Ford Truck Sales, 55 S.W.3d 427, 437 (Mo. App. E.D. 2005).

Williams. v. A.B. Chance, 676 S.W.2d 1 (Mo. App. W.D. 1984).

Dean v. St. Luke's Hospital, 936 S.W.2d 601, 603 (Mo. App. 1997); *Mathia v. Contract Freighters, Inc.*, 929 S.W.2d 271, 278 (Mo. App. S.D. 1996); *Sifferman v. Sears, Roebuck and Co.*, 906 S.W.2d 823, 828 (Mo. App. 1995).

Claimant's Exh. B (Dr. Sedgwick's August 5, 2008, report, included in the deposition). See also Claimant Exh. B, pp. 12-13.

Employer/insurer's Exh. 1, p. 24.

Employer/insurer's brief, page 53.

Id.